Supreme Court, U.S.
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No. 96-155

In The

Supreme Court of the United States

October Term, 1995

JAMES MICHAEL HARRIS AND JUDITH A. HARRIS,

Petitioners,

vs.

CITY OF PORT HURON,

Respondent.

On Petition For Writ Of Certiorari To The Court Of Appeals Of The State Of Michigan

RESPONDENT CITY OF PORT HURON'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Dated: August 27, 1996

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OPINIONS BELOW

The January 29, 1996 Order of the Michigan Supreme Court unanimously denying Petitioner's Application for Leave to Appeal, *City of Port Huron v. Harris*, ___ Mich. ___, No. 103041 (Jan 29, 1996), is included as Appendix A to this Brief. Despite referencing and producing the Michigan Supreme Court's order denying Petitioner's Motion for Rehearing relating to the January 29, 1996 Order, the January 29, 1996 Order was omitted from the Petition.

STATEMENT OF JURISDICTION

Petitioners purport to invoke the jurisdiction of this Court pursuant to 28 U.S.C.A. § 1257(a) (West 1993). Petitioners contend this Court's review is necessary to correct the Michigan Court of Appeals' misapplication of the *Nollan v. California Coastal Comm'n*, 483 U.S. 825 (1987) and *Dolan v. City of Tigard*, ___ U.S. ___, 114 S.Ct. 2309 (1994), decisions. (Pet. at i). However, this Court cannot properly exercise jurisdiction over this action, as Petitioners failed to present the question sought for review to the Michigan courts. *Infra* at 6-8.

STATUTORY PROVISIONS INVOLVED

Section 1 of Michigan's Rehabilitation of Blighted Areas Act (the "RBA") provides:

> The legislature finds and declares that large areas in the municipalities of the state have become blighted and significant areas in the

> municipalities of the state are deteriorating in a manner which leads to severe blight, with the consequent impairment of taxable values upon which, in large part, municipal revenues depend; that those blighted areas are detrimental or inimical to the health, safety, morals, and general welfare of the citizens, and to the economic welfare of the municipality; that in order to improve and maintain the general character of the municipality, it is necessary to rehabilitate those blighted areas; that the conditions found in blighted areas cannot be remedied by the ordinary operations of private enterprise, with due regard to the general welfare of the public, without public participation in the planning, property, acquisition or disposition and related implementation and financing of the remedies; that the purposes of this act are to rehabilitate those areas by improving or acquiring and developing properties within the areas for the protection of the health, safety, morals and general welfare of the municipality, to preserve existing values of other properties within or adjacent to the areas, and to preserve the taxable value of the property within the areas; and that the necessity in the public interest for provisions enacted in this act is hereby declared as a matter of legislative determination to be a public purpose and a public use.

Mich. Comp. Laws § 125.71 (West 1986 & Supp. 1996).

Section 2(a) of the RBA provides

> "Blighted area" means a portion of a municipality, developed or undeveloped, improved or unimproved, with business or residential uses, marked by a demonstrated pattern of deterioration in physical, economic, or social conditions,

> and characterized by such conditions as functional or economic obsolescence of buildings or the area as a whole, physical deterioration of structures, substandard building or facility conditions, improper or inefficient division or arrangement of lots and ownerships and streets or other open spaces, inappropriate mixed character and uses of the structures, deterioration in the condition of public facilities or services, or any other similar characteristics which endanger the health, safety, morals, or general welfare of the municipality, and which may include any buildings or improvements not in themselves obsolescent, and any real property, residential or nonresidential, whether improved or unimproved, the acquisition of which is considered necessary for rehabilitation of the area. It is expressly recognized that blight is observable at different stages of severity, and that moderate blight unremedied creates strong probability that severe blight will follow. Therefore, the conditions that constitute blight are to be broadly construed to permit a municipality to make an early identification of problems and to take early remedial action to correct a demonstrated pattern of deterioration and to prevent worsening of blight conditions.

Mich. Comp. Laws § 125.72(a) (West 1986 & Supp. 1996).

Section 3 of the RBA states:

> Any municipality may bring about the rehabilitation of blighted areas and the prevention, reduction or elimination of blight, blighting factors or causes of blight, and for that purpose may acquire real property by purchase, gift, exchange or condemnation, and may lease, sell,

> renovate, improve, or exchange such real property in accordance with the provisions of this act.

Mich. Comp. Laws § 125.73 (West 1986 & Supp. 1996).

Section 5 of the RBA provides:

> For the accomplishment of the purposes of this act, the municipality shall acquire fee simple title in real property by purchase, gift, exchange, condemnation or otherwise, and shall apply such real property thereafter to the expressed purposes of this act.
>
> The local legislative body may institute and prosecute proceedings under the power of eminent domain in accordance with the laws of the state or provisions of any local charter relative to condemnation. The purposes contemplated by this act are hereby declared to be public purposes within the meaning of the constitution, state laws and charters relative to the power of eminent domain. No resident owner in a development area may be dispossessed after condemnation under the provisions of this act until other adequate housing accommodations are available, to the people displaced.

Mich. Comp. Laws § 125.75 (West 1986).

COUNTER-STATEMENT OF THE CASE

Respondent City of Port Huron (the "City") is a municipal corporation located in St. Clair County, Michigan. The instant case arises out of the City's efforts to remediate a blighted area within the City, known as the

Water Street Redevelopment Area ("Redevelopment Area").

Beginning in the 1950s, the Redevelopment Area experienced a period of physical, economic and social decline. As industry left the City, the dilapidated buildings; mixed commercial, residential and industrial uses; and deteriorated and outdated public facilities in the Redevelopment Area increased. (Tr. at 18-28; Sept. 7, 1989 Tr. at 70-80). In addition to this physical deterioration, the Redevelopment Area underwent a period of economic deterioration, as income levels became the lowest of any area in the City. (9-7-89 Tr. at 80). As time passed, conditions in the Redevelopment Area worsened and complaints multiplied. *Id.*

Beginning in the 1970s, the City targeted the Redevelopment Area as a region in need of renewal and revitalization. The City retained urban planning experts to devise a strategy to remediate these conditions. (Tr. at 12). These experts concluded the Redevelopment Area's problems would best be addressed by adopting a long term plan for developing medium to high density residential development with commercial development on the perimeter. (Tr. at 13-19).

Based upon the experts' conclusions, the City set forth on a long-term strategy to improve conditions in the Redevelopment Area. After consideration of a variety of alternatives, the City decided the best way to revitalize this blighted area would be through redevelopment and the City began to acquire properties in the Redevelopment Area in the late 1970's. (Tr. at 17-20). Eventually, the City decided the most efficient way to redevelop the area

was to contract with a private developer. In 1984, the City entered into a redevelopment agreement with a private developer. (Tr. at 20, 89). However, this agreement was terminated due to the private developer's inability to obtain necessary financing. (Tr. at 89). Following the termination of this agreement, the City entered into a development agreement with a second private developer, Southeastern Development Company or SEDCO. (Tr. at 89-90; Pet. App. F). The purpose of this agreement was to effectuate the City's long-term goal of redeveloping this blighted area. (Tr. at 90).

In November 1988, the City initiated condemnation proceedings on Petitioners' property,[1] pursuant to Michigan's Uniform Condemnation Procedures Act (the "UCPA"), Mich. Comp. Laws §§ 213.51-213.75, and Michigan's Rehabilitation of Blighted Areas Act (the "RBA"), Mich. Comp. Laws §§ 125.71-125.84. While the UCPA sets forth the judicial procedure for effectuating a taking, the RBA provides the substantive basis for acquiring the property, the public purpose being the eradication of blight. The RBA requires municipal entities to establish a Citizens District Council ("CDC") for the purpose of obtaining community input regarding any proposed development. Consistent with the RBA, the City established a CDC and undertook substantial efforts to recruit residents of the Redevelopment Area to participate. (Tr. at

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[1] Petitioner correctly notes this was the second time the City had commenced condemnation actions on Petitioners' property. (Pet. at 3-4). In 1987, the City's condemnation was dismissed by the trial court because of certain procedural defects. (Pet. App. at 10). After correcting these procedural flaws, the City initiated the instant condemnation proceeding.

102-123). However, the City experienced a great deal of difficulty getting residents to participate in the process. Indeed, Petitioner James Harris was asked to serve as a member of the CDC, but Mr. Harris refused. (Tr. at 111). Notwithstanding Mr. Harris' lack of involvement, the City was able to find a sufficient number of residents willing to participate in the CDC.

The CDC provided the City with valuable insight into the proposed development and ultimately approved the City's redevelopment plan. Following the CDC's approval, the City commenced the instant condemnation action.

On February 6, 1989, Petitioners filed a Motion for Review of Necessity. After conducting a hearing, the trial court found (1) the Redevelopment Area was blighted, (2) Petitioners' parcels were reasonably suitable and necessary for the contemplated project, and (3) the City had complied with the requirements set forth in the RBA. (Pet. App. at 1-8). Following this ruling, Petitioners filed an Application for Leave to Appeal to the Michigan Court of Appeals, claiming the trial court's decision was clearly erroneous. The Court of Appeals denied the application. (Pet. App. at 16).

Petitioners then applied for leave to appeal to the Michigan Supreme Court. In lieu of granting Petitioners' leave to appeal, the Michigan Supreme Court remanded the case to the Michigan Court of Appeals as on leave granted. (Pet. App. at 17-18). Petitioners advanced four assignments of error before the Michigan Court of Appeals. (App. B). After briefing and argument, the Michigan Court of Appeals rejected Petitioners' four

assignments of error in a *per curiam* opinion, finding "none of [the issues presented by Petitioners] to have merit." (Pet. App. at 3).

Petitioners subsequently filed an Application for Leave to Appeal to the Michigan Supreme Court. Again, Petitioners advanced four assignments of error. (App. C). On January 29, 1996, the Michigan Supreme Court denied Petitioners' application without dissent, explaining Petitioners had failed to identify an issue warranting consideration by the court. (App. A).

On February 20, 1996, Petitioners filed a Motion for Reconsideration with the Michigan Supreme Court regarding the January 29, 1996 Order. The Michigan Supreme Court unanimously rejected Petitioners' motion finding there was no basis for believing the January 29, 1996 Order was erroneous. (Pet. App. at 19-20). Petitioners filed the instant Petition for Writ of Certiorari on or about July 29, 1996.

ARGUMENTS FOR DENYING PETITION

I. THE COURT DOES NOT HAVE JURISDICTION TO HEAR PETITIONERS' CLAIMS ARISING UNDER THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION, AS SUCH CLAIMS WERE NOT RAISED IN THE STATE COURT.

Petitioners assert this Court has jurisdiction over this case pursuant to 28 U.S.C.A. § 1257(a) (West 1993). Section 1257(a) vests this Court with discretionary authority to hear cases involving constitutional challenges to the

validity of a state statute arising from the final judgment of the highest state court. Petitioners present a single question for this Court's review: whether the Michigan Court of Appeals misapplied this Court's decisions in *Nollan v. California Coastal Comm'n*, 483 U.S. 825 (1987), and *Dolan v. City of Tigard*, ___ U.S. ___, 114 S.Ct. 2309 (1994). (Pet. at i). However, Petitioners' failure to challenge the City of Port Huron's actions as violative of the principles set forth in *Nollan/Dolan* before the Michigan Court of Appeals precludes Petitioners from invoking this Court's jurisdiction.

Under Michigan law, arguments not properly presented to a lower court are deemed abandoned upon subsequent appeal. *Mitcham v. City of Detroit*, 355 Mich. 182, 203, 94 N.W.2d 388, 399 (1959). The Michigan Court of Appeals has repeatedly admonished "[a] party may not leave it to this court to search for authority to sustain or reject its position. A statement of position without supporting citation is insufficient to bring an issue before this Court." *Speaker-Hines & Thomas Inc. v. Michigan Dep't of Treasury*, 207 Mich. App. 84, 90-91, 523 N.W.2d 826, 829 (1994); *Roberts v. Vaughn*, 214 Mich. App. 625, 543 N.W.2d 79 (1995).

Petitioners did not challenge the City's actions as violative of the principles set forth in *Nollan/Dolan* before either the Michigan Court of Appeals or Michigan Supreme Court. In fact, Petitioners never even referenced the *Nollan/Dolan* decisions in their briefs submitted to the Michigan courts, thereby explaining the Michigan Court of Appeals' failure to discuss these issues. Instead, Petitioners challenged the trial court's actions as contrary to the principles set forth in the Michigan Supreme Court's

Poletown Neighborhood Council v. Detroit, 410 Mich. 616, 304 N.W.2d 455 (1981) decision.[2] (*See* App. B & C.) Similarly, Petitioners did not challenge the trial court's failure to conduct a separate public use hearing before either the Michigan Court of Appeals or the Michigan Supreme Court. (*Id.*) It was only after a unanimous Michigan Supreme Court determined Petitioners had failed to present an issue worthy of review under Michigan law, did Petitioners concoct these new claims of error.

Historically, this Court has refused to review judgments rendered by the highest court of a state unless a federal question has been both raised and decided in the state court below. *Yee v. City of Escondido*, 503 U.S. 519, 533 (1992); *Beck v. Washington*, 369 U.S. 541, 549-53 (1962). This general rule is based upon principles of federalism and the Court's desire to ensure cases are heard only after a record has been developed and the issues properly synthesized. *Illinois v. Gates*, 462 U.S. 213, 221-222 (1983). Petitioners' failure to present the instant question to the Michigan Court of Appeals and Michigan Supreme Court prevents this Court from exercising jurisdiction pursuant to 28 U.S.C.A. § 1257(a).

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[2] The *Poletown* decision was not based upon federal constitutional principles; rather, the *Poletown* decision was based solely upon the Michigan Supreme Court's interpretation of the Michigan Constitution of 1763, Art. X, § 2.

II. THE CITY OF PORT HURON'S CONDEMNATION OF PETITIONERS' PROPERTY DID NOT VIOLATE THE FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

The power of eminent domain is a fundamental and necessary attribute of sovereignty, superior to all private property rights. *Georgia v. City of Chattanooga*, 264 U.S. 472, 480 (1924). However, this power is limited by the requirements that takings be for a "public use" and just compensation be paid. U.S. Const. amends. V & XIV. Petitioners contend the City's condemnation and transfer of blighted property to a private entity for redevelopment runs afoul of the Fifth Amendment Public Use Clause. (Pet. at 8). Because Petitioners' claim has been repeatedly and consistently rejected by this Court, the Petition for Writ of Certiorari should be denied.

A. Fifth Amendment Public Use Clause

While this Court has previously held the power of eminent domain may not be exercised solely for the benefit of another private person without a justifying public purpose under the Fifth Amendment, *Thompson v. Consolidated Gas Utils. Corp.*, 300 U.S. 55 (1937), the Court has applied a very deferential standard in determining whether such public purpose exists. In *Hawaii Housing Auth. v. Midkiff*, 467 U.S. 229, 240-241 (1984), the Court stated "[t]the public use requirement is . . . coterminous with the scope of the sovereign's police powers" and "where the exercise of the eminent domain power is rationally related to a conceivable public purpose, the

Court has never held a compensated taking to be proscribed by the Public Use Clause." The question presented by the instant Petition is whether this deferential standard should be applied when a governmental entity transfers property obtained by condemnation to an identifiable private party.

In *Berman v. Parker*, 348 U.S. 26 (1954), the Court was presented with a similar question. The District of Columbia's efforts to condemn dilapidated property and transfer the property to a private party for redevelopment was challenged by the existing landowners as violative of the Fifth Amendment Public Use Clause. The Court rejected the challenge finding the action to be a valid exercise of the District's police powers. *Id.* at 34. Significant to the instant case, the Court unequivocally rejected the landowners' claim that the transfer of condemned property to an identified private party violated the public purpose requirement, explaining:

> Once the object is within the authority of Congress, the means by which it will be attained is also for Congress to determine. Here one of the means chosen is the use of private enterprise for redevelopment of the area. Appellants argue that this makes the project a taking from one businessman for the benefit of another businessman. But the means of executing the project are for Congress and Congress alone to determine, once the public purpose has been established. The public end may be as well or better served through an agency of private enterprise than through a department of government – or so the Congress might conclude. We cannot say that

> public ownership is the sole method of promoting the public purposes of community redevelopment projects.

Id. at 33-34.

In 1984, the Court was, again, called upon to address the parameters of the Fifth Amendment Public Use Clause in *Hawaii Housing Auth. v. Midkiff*, 467 U.S. 229 (1984). In *Midkiff*, the Court was asked to determine the validity of Hawaii's Land Reform Act of 1967, which authorized the State to condemn residential property and transfer ownership of the property to existing lessees. *Id.* at 233. Because the condemnation merely redistributed property from one private party to another, existing landowners challenged the condemnation as violative of the Fifth Amendment Public Use Clause. Again, the Court applied a very deferential standard in evaluating the State's action. The Court ruled:

> The mere fact that property taken outright by eminent domain is transferred in the first instance to private beneficiaries does not condemn that taking as having only a private purpose. The Court long ago rejected any literal requirement that condemned property be put into use for the general public. It is not essential that the entire community, nor even any considerable portion, . . . directly enjoy or participate in any improvement in order [for it] to constitute a public use.

Id. at 243-244 (quotation omitted). Because the Court found the exercise of the State's eminent domain power to be rationally related to correcting the problem of land oligopoly, the Court concluded the State's actions were consistent with Fifth Amendment. *Id.*

The Michigan Court of Appeals ruling is consistent with this Court's holdings in *Berman* and *Midkiff*. The Court of Appeals found "the controlling purpose of the Water Street redevelopment plan is to rehabilitate a blighted area." (Pet. App. at 4). The Court of Appeals finding was supported by the City's August 8, 1988, Resolution declaring Petitioners' property to be located in a blighted area as defined by the RBA (App. D), and evidence presented at the necessity hearing, which established "blight was extant throughout the whole [Redevelopment Area] as defined by the [RBA]." (Pet. App. at 11-12). Under *Berman* and *Midkiff*, as well as applicable Michigan law, the mere fact the blighted property would be transferred to a private party for redevelopment is constitutionally irrelevant.

Petitioners now claim the necessity hearing did not afford them an opportunity to challenge the City's public purpose. (Pet. at 8-9). This is simply false. As was discussed above, the public purpose underlying the City's condemnation of Petitioners' property has been and remains the continued eradication of urban blight in the Redevelopment Area. At the necessity hearing, Petitioners were afforded an opportunity to present evidence as to whether the Redevelopment Area was blighted, thereby challenging the public purpose of the condemnation. However, Petitioners "presented no evidence" challenging the City's finding of blight. (Pet. App. at 11-12). Instead, Petitioners argued the mere fact the City intended to transfer the condemned property to an identified private party transformed the purpose from public to private. Once Petitioners conceded the property was,

in fact, blighted, the City's condemnation of such property was, by definition, done to benefit the public, irrespective of any incidental benefit that might inhere to a private interest. Mich. Comp. Laws § 125.75 (West 1986). *See In Re Slum Clearance*, 331 Mich. 714, 50 N.W.2d 340 (1951). Accordingly, the City's exercise of its eminent domain power was rationally related to a conceivable public purpose, and, therefore, consistent with the Fifth Amendment Public Use Clause under *Berman* and *Midkiff*.

B. Regulatory Takings Cases

Dismissing without discussion the Court's holdings in *Berman* and *Midkiff*, Petitioners ask this Court to apply the principles set forth in *Nollan v. California Coastal Comm'n*, 483 U.S. 825 (1987), and *Dolan v. City of Tigard*, ___ U.S. ___, 114 S.Ct. 2309 (1994), in determining the appropriate standard of review. (Pet. at 5-6). However, Petitioners' reliance upon *Nollan/Dolan* is misplaced, as neither *Nollan* nor *Dolan* is relevant to this dispute.[3]

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[3] Petitioners reliance upon the Michigan Supreme Court's decision in *Poletown Neighborhood Council v. Detroit*, 410 Mich. 616, 304 N.W.2d 455 (1981) (Pet. at 5-6), is similarly misplaced. In *Poletown*, the Michigan Supreme Court ruled the City of Detroit's condemnation of property under the Economic Development Corporations Act ("EDCA"), Mich. Comp. Laws §§ 125.1601-125.1636, was subject to heightened scrutiny because the purpose of the condemnation was to transfer the property to General Motors. 410 Mich. at 629. In *Poletown*, the City of Detroit had never even considered redevelopment of the community prior to being contacted by General Motors. 410 Mich. at 616. Therefore, the Michigan Supreme Court was concerned that General Motors had become the "engine"

In both *Nollan* and *Dolan*, this Court considered the constitutionality of local governmental entities conditioning the issuance of building permits upon an applicant's dedication of land for governmental use. The issue in each case was whether local governmental entities were using otherwise legitimate regulations as a means of circumventing their constitutional obligation to pay just compensation when taking property. *Dolan*, 114 S. Ct. at 2317. To ensure the local governmental entities were not using the land-use regulations as a means of avoiding the obligation to pay just compensation, the Court subjected the land-use regulations to a so-called "rough proportionality" test. *Id.* Under *Dolan*, the government must determine whether the specific regulation or condition "is related both in nature and extent to the impact of the

---

driving the condemnation. The same concern is not present in the instant case, as the City's efforts to revitalize the Redevelopment Area began a decade before the City had contracted with SEDCO.

Similarly, the purpose served by the condemnation in *Poletown* is distinguishable from the purpose served in the instant case. In *Poletown*, the City of Detroit sought to promote economic growth by condemning property and transferring it to General Motors. If the City of Detroit had not transferred the property to General Motors, the goal of economic development would not have been realized. Whereas in the instant action, the City's goal of eradicating blight is not dependent upon the transfer of the property to a private party. As the Michigan Court of Appeals concluded, the primary purpose of the City's condemnation of Petitioners' property was the elimination of blight and the subsequent transfer of the condemned property to a private person or entity was ancillary to this primary purpose. (Pet. App. at 4).

proposed development." *Id.* at 2319-2320. If the government cannot demonstrate the required relationship, then the government may not impose conditions on the issuance of the permit. Rather, the government is required to "implement its policy by condemnation." *Id.* at 2322, n. 10.

Petitioners' suggestion that this Court's rulings in *Nollan/Dolan* are relevant to the instant case is without merit. The instant case does not involve an attempt by a governmental entity to avoid its obligation to pay just compensation, as was at issue in both *Nollan* and *Dolan*. The City has been and remains willing to pay Petitioners just compensation for their property. Thus, the Court's concern in *Nollan* and *Dolan* that the government "may not require a person to give up a constitutional right – here the right to receive just compensation when property is taken for a public use – in exchange for a discretionary benefit conferred by the government" is simply not presented on these facts. *Dolan*, 114 S.Ct. at 2317. Because the City has sought to implement its redevelopment "policy by condemnation," the City is not required to satisfy the mere stringent standard imposed under *Dolan*. *Id.* at 2322, n. 10. The proper standard of review of the instant action was the deferential standard applied by the *Berman* and *Midkiff* courts and reaffirmed in *Nat'l Railroad Passenger Corp. v. Boston & Maine Corp.*, 503 U.S. 407, 422 (1992) ("Court will not strike down a condemnation on the basis that it lacks a public use so long as the taking is rationally related to a conceivable public purpose").

CONCLUSION AND RELIEF REQUESTED

Throughout Michigan and the Midwest, cities have been forced to address urban blight left behind as manufacturing jobs disappeared. For several years, the City of Port Huron struggled with this issue, eventually concluding rehabilitation of these areas would only come after City intervention. The goal of the City has been and remains to be to protect the health and welfare of its citizens. The condemnation of Petitioners' property was part of the fulfillment of this goal.

For all of the above reasons, Respondent City of Port Huron respectfully requests that the Court deny the Petition for Writ of Certiorari.

Respectfully submitted,

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DATED: August 27, 1996

APPENDIX A

Michigan Supreme Court
Lansing, Michigan

Order
Entered: January 29, 1996

James H. Brickley
Chief Justice

Charles L. Levin
Michael F. Cavanagh
Patricia J. Boyle
Dorothy Comstock Riley
Conrad L. Mallett, Jr.
Elizabeth A. Weaver
Justices

103041

CITY OF PORT HURON,

Plaintiff-Appellee,

v

JAMES MICHAEL HARRIS, JUDITH A. HARRIS, JAMES DOCHERTY and LOUISE DOCHERTY,

Defendants-Appellants.

SC: 103041
COA: 144366
LC: 88-002519
88-002520

On order of the Court, the application for leave to appeal is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

20123

[SEAL] I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a

true and complete copy of the order entered at the direction of the Court.

January 29 , 1996 /s/ Corbin R. Davis
Clerk

APPENDIX B

STATE OF MICHIGAN

IN THE COURT OF APPEALS

DEFENDANTS-APPELLANTS' BRIEF ON APPEAL

STATEMENTS OF QUESTIONS PRESENTED

I. DID THE TRIAL COURT ERR BY FAILING TO APPLY THE *POLETOWN* SAFEGUARDS FOR A CONDEMNATION UTILIZING A SPECIALLY CREATED LEGISLATIVE PUBLIC PURPOSE STATUTE, REQUIRING THE CITY OF PORT HURON TO PASS THE HEIGHTENED SCRUTINY TEST WHERE A CLEARLY IDENTIFIABLE PRIVATE INTEREST WAS TO BE THE BENEFICIARY OF THE CONDEMNATION. WAS THE COURT OF APPEALS CLEARLY ERRONEOUS IN FAILING to REVIEW SUCH ISSUE?

Plaintiff-Appellee says "No".

Defendants-Appellants say "Yes".

Trial Court says "No".

II. DID THE TRIAL COURT COMMIT ERROR IN FINDING THAT THE CITY OF PORT HURON COMPLIED WITH THE STATUTORY REQUIREMENTS OF THE BLIGHTED AREAS REHABILITATION ACT, MCL 125.71, *ET SEQ.;* MSA 5.3501, *ET SEQ.*, AND THUS ALLOWING THE CITY OF PORT HURON TO RELY UPON THAT ACT FOR THE TAKING OF PRIVATE PROPERTY? DID THE

COURT OF APPEALS ERR IN NOT REVIEWING SAID ISSUE?

Plaintiff/Appellee says "No".

Defendants/Appellants say "Yes".

Trial Court says "No".

III. DID THE TRIAL COURT COMMIT ERROR BY NOT FINDING FRAUD, ERROR OF LAW, OR ABUSE OF DISCRETION BY THE CITY OF PORT HURON IN THE CONDEMNATION OF DEFENDANTS' PARCELS OF PRIVATE PROPERTY? DID THE COURT OF APPEALS ERR IN NOT REVIEWING SAID ISSUE?

Plaintiff/Appellee says "No".

Defendants/Appellants say "Yes".

Trial Court says "No".

IV. DID THE TRIAL COURT COMMIT ERROR BY NOT GRANTING SUMMARY DISPOSITION TO THE DEFENDANTS/APPELLANTS HEREIN BASED UPON SECTION 78 OF THE CITY OF PORT HURON CHARTER PROHIBITING THE SALE AND DEVELOPMENT OF WATERFRONT PROPERTY WITHOUT A FAVORABLE VOTE OF THE PORT HURON ELECTORATE? DID THE COURT OF APPEALS ERR IN NOT REVIEWING SAID ISSUE?

Plaintiff/Appellee says "No".

Defendants/Appellants say "Yes".

Trial Court says "No".

APPENDIX C

STATE OF MICHIGAN
IN THE MICHIGAN SUPREME COURT

DEFENDANTS/APPELLANTS' APPLICATIONS FOR LEAVE TO APPEAL

STATEMENTS OF QUESTIONS PRESENTED

I. DID THE TRIAL COURT ERR BY FAILING to APPLY THE POLETOWN SAFEGUARDS FOR A CONDEMNATION UTILIZING A SPECIALLY CREATED LEGISLATIVE PUBLIC PURPOSE STATUTE, REQUIRING THE CITY OF PORT HURON'S CONDEMNATION TO MEET THE HEIGHTENED SCRUTINY TESTS WHERE AN IDENTIFIABLE PRIVATE INTEREST HAD A CONTRACTUAL RIGHT TO RECEIVE THE CONDEMNED PROPERTY? WAS THE COURT OF APPEALS CLEARLY IN ERROR IN FAILING TO APPLY THE POLETOWN STANDARDS?

Plaintiff/Appellee says "No".

Defendants/Appellants say "Yes".

Trial Court says "No".

II. DID THE TRIAL COURT COMMIT ERROR IN FINDING THAT THE CITY OF PORT HURON COMPLIED WITH THE STATUTORY REQUIREMENTS OF THE BLIGHTED AREAS REHABILITATION ACT, MCL 125.71, *ET SEQ.*; MSA 5.3501, *ET SEQ.*, AND THUS ALLOWING THE CITY OF PORT HURON TO RELY UPON THAT ACT FOR THE TAKING OF PRIVATE PROPERTY? DID THE COURT OF APPEALS ERR IN NOT REVERSING THIS ISSUE?

Plaintiff/Appellee says "No".

Defendants/Appellants say "Yes".

Trial Court says "No".

III. DID THE TRIAL COURT COMMIT ERROR BY NOT FINDING FRAUD, ERROR OF LAW, OR ABUSE OF DISCRETION BY THE CITY OF PORT HURON IN THE CONDEMNATION OF DEFENDANTS' PARCELS OF PRIVATE PROPERTY? DID THE COURT OF APPEALS ERR IN NOT REVERSING THIS ISSUE?

Plaintiff/Appellee says "No".

Defendants/Appellants say "Yes".

Trial Court says "No".

IV. DID THE TRIAL COURT COMMIT ERROR BY NOT GRANTING SUMMARY DISPOSITION TO THE DEFENDANTS/APPELLANTS BASED ON SECTION 78 OF THE CITY OF PORT HURON CHARTER PROHIBITING THE SALE AND DEVELOPMENT OF THE WATER FRONT PROPERTY WITHOUT A FAVORABLE VOTE OF THE PORT HURON ELECTORATE? DID THE COURT OF APPEALS ERR IN NOT REVERSING THIS ISSUE?

Plaintiff/Appellee says "No".

Defendants/Appellants say "Yes".

Trial Court and Court of Appeals says "No".

APPENDIX D

Resolution No. 12
Dated: August 8, 1988

I hereby certify that this is a true and correct copy of a resolution adopted by the Port Huron City Council at a regular meeting held Monday, August 8, 1988.

/s/ Marian R. Wagner
Marian R. Wagner
City Clerk

WHEREAS, pursuant to the terms and requirements of Act 344 of the Michigan Public Acts of 1945, as amended, a public hearing was held by the City Council for the City of Port Huron at its regular meeting on July 25, 1988, in which several citizens as well as a legal representative of some citizens participated; and

WHEREAS, the City Council has had the benefit of minutes of meetings of the Citizens District Council which reflect the thoughts and views of those council members on several aspects of the area constituting the proposed blighted area the boundaries of which were established by the City Council at its May 20, 1988 meeting; and

WHEREAS, the members of the City Council have, in addition to the foregoing personally examined and viewed conditions within the boundaries of the proposed blighted area;

NOW THEREFORE, based upon the foregoing occasions and events, the City Council makes the following specific findings of facts about the proposed blighted area;

1) properties are functionally and economically obsolescent;

2) properties are physically deteriorated, unkept and substandard;

3) there are conflicting land uses, and

4) properties are socially unacceptable and hazardous because of rodent infestation;

NOW THEREFORE, the City Council for the City of Port Huron hereby finds and declares the area whose boundaries were defined in its May 20, 1988 Resolution No. 1 (which description is attached) to be a Blighted Area within the definition and meaning of Act 344 of the Michigan Public Acts of 1945, as amended.

Moved by Councilmember Gilmer

Supported by Councilmember Robbins

ADOPTED/~~REJECTED~~ BY THE FOLLOWING VOTE:

Yes – Mayor Brooks; Councilmembers Gillhooley, Gilmer, Neal & Robbins

No – None

Absent – Councilmembers Cogley & Krabach